

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMARY SUIT NO.3744 OF 1989

Corporation Bank	Plaintiff
versus	
M/s.Blossoms Sales Corpn.	
and others	Defendants

Mr.Prafulla Sawant i/by S.N.Acharya for
plaintiffs.

CORAM : A.M.KHANWILKAR, J.
DATE : 16th October 2007

PC :-

1. The suit has already been decreed against defendant nos.1 to 3, the principal borrowers. The defendant no.4 is the guarantor. The defendant no.4 has been duly served. In spite of service no appearance has been entered on behalf of defendant no.4 nor any written statement has been filed so far. In the circumstances, I proceed to with the suit to pass an order against defendant no.4 in the present suit in exercise of Order VIII, Rule 10 of CPC.

2. The plaintiff's case is that financial facility was extended to defendant no.1 which is a partnership firm. Defendant nos.2 and 3 are the partners of the said firm. The defendant

no.4 stood guarantor for the said transaction as per the financial facility. Defendant nos.1 to 3 availed of facility of Rs.3.00 lakh which position is reinforced from the documents placed on record by the plaintiffs. The concerned defendants not only submitted loan application but also executed demand promissory note, deed of hypothecation, guarantee agreement to owe the liability. As aforesaid, defendant no.4 stood guarantor for the transaction. Accordingly, even defendant no.4 is jointly and severally liable to pay the outstanding dues with defendants 1 to 3. The plaintiff is relying on the statement of account maintained in ordinary course of business. The bank statement establishes the fact that the defendant nos.1 to 3 were liable to pay a sum of Rs.4,91,474=69 Paise as on 26th October 1989. In spite of legal notice issued to the defendants, the defendants failed to repay the amount. The documents executed between the parties concede the position that the rate of interest to be recovered for delayed payment will be subject to minimum 17.5% p.a.. It is on that basis the plaintiff has approached this Court for following reliefs :-

(i) that the Defendants be ordered and decreed to pay to the Plaintiffs the said

sum of Rs.4,91,474=69 Ps. as per the Particulars of Claim vide No.'E' with further interest thereon at 18.5% per annum compounded quarterly from the date of filing of the suit till the date of payment;

(ii) for costs of the suit."

3. As mentioned earlier, the decree is already passed against defendants 1 to 3. Insofar as defendant no.4 is concerned, he has neither chosen to appear before this Court nor has filed any written statement. On the other hand, the plaintiff has filed affidavit of evidence in lieu of examination of chief sworn by A.R.K.Prasad, Chief Manager of Assets Recovery Management Branch of plaintiff sworn on 16th October 2007 reiterating the position stated in the plaint. Besides, the plaintiff has relied on the documentary evidence as referred to above, which reinforces the case made out by the plaintiff.

4. As the plaintiff has substantiated their claim that the defendant nos.1 to 3 availed of the principal amount as reflected in the bank statement coupled with the fact that the defendant no.4 stood guarantor for the transaction, the plaintiff is entitled to decree even against defendant no.4 for recovery of the outstanding amount alongwith interest as claimed.

5. As mentioned earlier, the interest claimed by the plaintiff is consistent with the agreed rate of interest agreed under the documents executed by the defendants in favour of the plaintiff. Accordingly, the suit is decreed on the following terms even against defendant no.4 in exercise of Order VIII, Rule 10 of CPC.

6. ORDER :-

(a) The defendant no.4 is ordered and decreed to pay the plaintiff a sum of Rs.4,91,474=69 Paise along with interest thereon @ 18.5% per annum compounded quarterly from the date of filing of the suit till the date of payment or realisation;

(b) Plaintiff is entitled to costs of the proceedings.

(A.M.KHANWILKAR, J.)